THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 8th day of March,2007

W.P.No.9057 of 2006

Between:-

The Chairman and Managing
Director, A.P. Power Generation
Corporation Ltd., Vidyuth Soudha,
Somajiguda, Hyderabad & others … Petitioners

and

P. Rambabu and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9057 of 2006

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 9-9-2005 made in I.D.No.105 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Warangal and to quash the same.

It appears, respondents 1 to 50 (workmen) raised a dispute which was referred to the Government and in turn, the Government referred the matter to the Industrial Tribunal under Section 10(1)(d) of the Industrial Disputes Act,1947 (for short 'the Act') for adjudication of the following issue:

> "Whether the petitioners are working as contract labour in the prohibited categories of employment as per G.O.Ms.No.41, dated 23-9-1996, followed by B.P.Ms.No.37, dated 18-5-1997 and whether they are entitled for absorption as per the scheme framed by the Board under B.P.No.272, dated 31-12-1997 for absorption of contract labour working in prohibited categories of employment"?

It was the case of the workmen, before the Tribunal, that they were all engaged in the 33 abolished categories of employment with A.P.GENCO (erstwhile A.P.State Electricity Board) and they have been on the rolls of the writ petitioners-Management as on 23-9-1996. Though their cases were recommended by the 3-men committee for absorption as per G.O.Ms.No.41, dated 23-9-1996, the respondents rejected their cases illegally. Therefore, the I.D.

The Management had filed a detailed counter before the Tribunal

stating that all the workmen were not working as contract labour as on 23-9-1996. It is false to say that they have been working as contract labour for the last 15 years. The *bona fide* certificates relied on by the workmen that they were working with petitioner No.2 herein as on 23-9-1996 are false. The allegation that respondents 1 to 24 and 40 have been working as contract labour under M/s Mech.Engineers and Erectors and were deputed to HP/LP welding work is totally false. The certificate said to have been issued by the Superintending Engineer O&M/KTPS-B, Paloncha on 25-2-1999 i.e. subsequent to the date of issue of *bona fide* certificates at the time of interview conducted in 1998 has no relevance. The averment that respondents 25 to 28 and 46 have been working through the licensed contractor i.e. M/s. Public Construction of Paloncha is totally false and incorrect and not borne out of any record. Respondents 29 to 32 and 47 were engaged by P.V. Lakshmipathi, Contractor for topping of oil in fluid couplings and the work is intermittent in nature and also does not fall under any of the 33 abolished categories of employment and the bonafide certificates issued also confirmed the same. Respondent No.13 has been working as Sub-Engineer under Chief Engineer, KTPS-V stage. Respondent No.25 is understood to have expired. Regarding respondents 33 to 43, the *bona fide* certificates issued in the year 1998 do not contain any particulars regarding their location of work. Further, respondent No.45 is not presently engaged in any of the works under the 2nd petitioner. Likewise, respondent No.46, as per the *bona fide* certificate issued in June,1998, was engaged in HP Welding works, Overhaul Emergency works, which does not come under abolished category. Regarding respondent No.47, he was engaged by the contractor - P.V.Lakshmipathi and not by M/s. Srinivas Coal Transport. The sum and substance of the counter was

that respondents 1 to 50 (workmen) do not fall within the 33 abolished categories of employment specified in G.O.Ms.No.41, dated 23-9-1996 and as on 23-9-1996 they were not working in the abolished categories. Therefore, they are not entitled for absorption into the services of A.P. Genco.

Before the Tribunal, on behalf of the workmen, W.W.1 to W.W.6 were examined and Exs.W1 to W50 were got marked. On behalf of the Management, M.W.1 was examined and Exs.M1 to M50 were marked. After a detailed consideration of both oral and documentary evidence, the Tribunal came to the conclusion that respondents 1 to 50 herein were working prior to 23-9-1996 and subsequent to 30-9-1996 in the prohibited category i.e. burner floor. They should have worked at the burner floor itself even for all these days, but for deputation made by the Superintending Engineer to work at welding unit since urgent works have to be attended in that unit. Hence, their cases are genuine and the Management cannot deny their absorption. Apart from that, there is no contra evidence placed by the Management to substantiate that the works attended to by the workmen are not of perennial in nature. On the other hand, the contractors stated in their evidence that their works are all permanent in nature and regular and they have been supplying these labour (present workmen) for attending to the works. Therefore, the Tribunal held that respondents 1 to 50 herein had been working in the prohibited categories of employment and they are entitled for absorption. In the result, it was held that the workmen are working as contract labour in the prohibited categories of employment as per G.O.Ms.No.41, dated 23-9-1996 followed by B.P.Ms.No.37, dated 18-5-1997 and entitled for absorption in A.P.Genco as per the scheme framed by the Board under B.P.Ms.No.272, dated 31-12-1997. Aggrieved by the same, the

Management filed the present Writ Petition.

Learned counsel for the petitioners-Management strenuously contended that the very reference made to the Tribunal is not tenable and even otherwise, the Tribunal could not have held that respondents 1 to 50 herein are entitled for absorption automatically without any discretion being left to the Management. Further, absolutely there is no evidence to show that the workmen were on deputation as on 23-9-1996 and they can be treated as in employment as on 23-9-1996 and as such, they are entitled for absorption, as a matter of right. It is for the Management to decide how many workmen are necessary and how many identifiable vacancies are available for the purpose of absorption of the people from the abolished categories.

Whereas, learned counsel for the respondent-workmen contended that there is nothing wrong in the reference made by the Government and no such objection was taken by the Management before the Labour Court. Further, it is established beyond doubt that the workmen are on the rolls of employment with the contractors as on 23-9-1996 and may be a few of them are deputed to work elsewhere, in view of exigencies, by the Superintending Engineer. Merely because they worked elsewhere on deputation, it cannot be said that they are not entitled for absorption as per G.O.Ms.No.41, dated 23-9-1996. What is the purport of G.O.Ms.No.41, dated 23-9-1996 is abolition of 33 categories of employment on contract basis. In fact, the date of the G.O. cannot be taken into consideration as a cut-off date for the purpose of absorption of the persons, who have worked in those categories. There is ample evidence on record to show that some of the workmen were working elsewhere on deputation as on the date of issuance of the G.O. The Tribunal has considered each and every aspect of evidence and rightly came to the conclusion that the

workmen are entitled for absorption as per G.O.Ms.No.41, dated 23-9-1996 as a matter of right, since their papers and eligibility were already subjected to scrutiny of by the 3-men committee appointed for the purpose of identification of the workers in the 33 abolished categories of employment. Therefore, the question of identifying number of vacancies for the purpose of absorption of the workmen and considering them against those vacancies does not arise. The rejection of the case of the workmen was arbitrary and illegal. No interference is called for by this Court into the Award passed by the Labour Court, under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

The question that falls for consideration, in this Writ Petition, is whether respondents 1 to 50 were entitled for absorption as per G.O.Ms.No.41, dated 23-9-1996 automatically or they are just entitled for consideration for absorption ?

According to the learned counsel for the petitioners, the very reference made by the Government is erroneous and even otherwise, as per the principles laid down in the decision reported in **STEEL AUTHORITY OF INDIA LTD. v. NATIONAL UNION WATERFRONT WORKERS**[1], the workmen are not entitled for automatic absorption into the service of A.P. Genco and at the most, they are entitled for consideration for such absorption, provided they satisfy the condition that they were on the rolls as on 23-9-1996. Learned counsel drawn attention of the Court to paragraphs 6(iii), 107, 108, 120 and 125 of the said Judgment. Para 6(iii) reads as under:

> "(iii) Whether the automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on issuance of a valid notification under Section

10(1) of the CLRA Act, prohibiting the contract labour in the establishment concerned."

It was held by the Apex Court that under Section 10 of Contract Labour (Regulation and Abolition) Act,1970 (for short 'the Act') there is no implicit requirement of automatic absorption of contract labour by principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10(1) of the Act prohibiting employment of contract labour in a given establishment. There cannot be any dispute as to this proposition.

There cannot be any automatic absorption of the workmen in the establishment concerned. In a given case, the contractor may engage more number of persons than required by paying petty wages. Whenever the contract labour is abolished, all the persons, who worked with the contractor, need not be absorbed. It all depends upon the requirement of the principal employer. An industrial adjudicator/Court cannot direct for absorption of all the contract labour as on the date of abolition of such employment on contract basis on abolition, automatically. On issuance of notification under Section 10(1) of the Act, prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labourer in regard to the conditions of service, the industrial adjudicator will have to consider the question, whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for working of the establishment under a genuine contract. If the contract is found to be not genuine, but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer, who shall be directed to regularize the services of the contract labour. If the employer intends to employ regular workmen,

he shall give preference to the erstwhile contract labour, if otherwise found to be suitable and if necessary by relaxing the condition as to the maximum age appropriately etc. The said Judgment has no application to the facts of the present case.

In the instant case, admittedly, after issuance of G.O.Ms.No.41, dated 23-9-1996, 3-men committee was constituted and the said committee examined the genuineness of the workmen and recommended for their absorption. It appears, only on the ground that they were not on the rolls as on 23-9-1996, the cases of the respondent-workmen were rejected. In fact it is found by the Tribunal, on evidence, that these workmen were on deputation as on 23-9-1996 elsewhere due to exigencies of service, as directed by the Superintending Engineer concerned. The deputation seems to be from 23-9-1996 to 30-9-1996. The Divisional Engineer issued a Memo stating that 27 workmen were deputed to work in HP/LP welding works from 23-9-1996 to 30-9-1996. Insofar as others are concerned, there was no dispute that they were on the rolls as on 23-9-1996. Under those circumstances, the Tribunal held that the Management cannot contend that subsequent to 23-9-196 they can engage contract labour in any one of the prohibited categories by prescribing a cut-off date for absorption and it cannot issue a proceeding putting forth the cut-off date for the purpose of absorption and if the workmen are employed even prior to 23-9-1996 or on or after 23-9-1996 through contractors in any of the prohibited categories, they are entitled for absorption. The evidence of M.W.1 is very interesting in this regard. He deposed that he had no personal knowledge as to whether the workmen were working and who are the contractors engaged them. However, on putting some leading questions, he accepted that he knows the contractor's name i.e. Mech Engineers. May be, the workmen were

working under them. He has also admitted that *bona fide* certificates are relevant material to consider the absorption of contract labour. The recommendations made by the committee were not placed before the Tribunal in spite of allowing time. He gave evidence on 23-9-2003, on which date, he promised to produce the file and recommendation made by the committee. But, on 23-10-2003 when he entered into the box for cross-examination, he stated that he was not filing the recommendations of the committee report. The respondents 1 to 50-workmen were recommended by the committee as their work was nearer to 33 abolished categories, even though they did not satisfy strictly in accordance with the guidelines. This is an improvement of his earlier version, after one month. He deposed that it is not true to suggest that he gave evidence contrary to the recommendations of the committee. He further deposed that the committee did not show any discrimination against any contract labour including the respondents. Out of 104 contract labour recommended for absorption, 54 persons were selected. However, as stated above, the recommendations of the committee were not filed into the Tribunal. On the other hand, the 1st respondent-W.W.1 gave a very elaborative and narrative evidence of the facts. He deposed that the names of respondents 1 to 50 herein were included in the 104 persons recommended by the committee and though their names were recommended, they were not absorbed. Nothing much has been elicited by the Management from the evidence of W.W.1. Apart from this, the contractors, who were examined as W.Ws.3 to 5 have categorically asserted that 50 workmen had worked under them and the persons worked under them are in the 33 abolished categories of employment and they were not absorbed as per G.O.Ms.No.41, dated 23-9-1996. W.W.4 categorically asserted that the works in burden floor will come under 33 abolished categories of

employment and 28 workers have not worked in burner floor from 23-9-1996 to 30-9-1996 and they were deputed to emergency unit as directed by the Superintending Engineer. Further, on 30-9-1996 they came back to burner floor and worked thereat as usual. It was further stated that from the beginning till the date of deposition, the nature of the work was the same in burner floor and some workers worked in burner floor were absorbed as per G.O.Ms.No.41, dated 23-9-1996. He gave some names of those persons. He deposed that the burner floor work in KTPS is continuous and perennial in nature. This all would show that the respondent-workmen were there on the rolls as on the date of issuance of G.O.Ms.No.41, dated 23-9-1996 and they fall into the 33 abolished categories of employment with the principal employer i.e. A.P. Genco. Further, the committee had recommended their names for absorption. The only ground on which the case of the respondent-workmen was not considered is that they were not on the rolls as on 23-9-1996, which was disproved in the evidence. Therefore, the question that these workmen are not entitled for automatic absorption simply because G.O.Ms.No.41, dated 23-9-1996 has been issued does not arise. The committee has recommended the names of the workmen on identifying them as genuine workers working in the abolished category. Therefore, it does not lie in the mouth of the Management to say that the workmen are not entitled for automatic absorption. The posts were identified and thereafter, the committee identified the persons, who had worked in those vacancies and though filled up about 54 vacancies, the case of respondents 1 to 50 were not considered on some flimsy grounds. Before this Court, the principal employer did not assert that the work, which was carried out through the contract labour, can be carried out only by engaging a few of them and not all of them. This itself shows that the committee has

identified the number of workers required for being employed from among the contract labour and respondents 1 to 50 were already identified. Therefore, the question of further giving leverage to the petitioners for considering absorption of the workmen does not arise. All of the workmen (respondents 1 to 50) are entitled for absorption as per the reference. The reference was only as to whether the workmen are entitled for absorption as per G.O.Ms.No.41, dated 23-9-1996. The Tribunal has rightly addressed the issue and declared that the workmen are entitled for absorption into the service of principal employer as per G.O.Ms.No.41, dated 23-9-1996. If really, the writ petitioners are aggrieved by the reference i.e. the way in which it was couched, they could have raised an objection at the earliest point of time, but they did not do so.

For all the above reasons, the Writ Petition is devoid of merits and is liable to be dismissed; accordingly, it is dismissed. But, in the circumstances, there shall no order as to costs.

-3-2007

prk

---

[1] 2001(7) SCC 1